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# Supreme Court of the United States

OCTOBER TERM, 1974

**No. 74 - 230**

ROBERT V. RAFTER,

*Petitioner,*

—VS.—

THE FAIRFIELD COUNTY TRUST COMPANY,

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The respondent, The Fairfield County Trust Company, hereby opposes the petitioner's prayer for a writ of certiorari filed on September 3, 1974 and request that said petition be denied.

### Opinion Below

The decision of the United States Court of Appeals for the Second Circuit in affirming the Rule 12(b) dismissal of complaint in the United States District Court for the District of Connecticut is set forth in the petitioner's appendix (Pet. App. A1 - A2).

### Questions Presented

1. Has the petitioner filed his writ of certiorari in the above case within ninety (90) days of the judgment of the United States Court of Appeals for the Second Circuit by filing on September 3, 1974?

2. Was the Court below and the District Court correct in dismissing the complaint following the rules set forth in *Tucker v. Maher* 497 F.2d 1309 (1974), *Pfotzer v. Dorr-Oliver, Inc.* Civil No. B587 (D. Conn. May 11, 1973) and *Kavanewsky v. Greater Development Co. of Conn., Inc.* Civil No. B-593 (D. Conn. July 5, 1973)?

3. Does the Connecticut Statute of Limitations provide an effective bar to this action?

4. Have prior decisions on the same set of facts determined the issue? *Rafter v. Blackmon et al* No. 72-1277 (Supreme Court of the United States October Term, 1972).

**Statement of the Case**

As presented below to the United States District Court for the District of Connecticut and as further set forth in the opinion of that Court set forth in petitioner's appendix (Pet. App. A12) and as is further set forth in the Brief in Opposition to Petition for Writ of Certiorari of respondents Harvey Koizim and Jerry Davidoff in the matter of *Rafter v. Blackmon et al,* No. 72-1277 (Supreme Court of the United States October Term 1972) this matter commenced in December of 1964 by a lawsuit involving rent and damage in a case brought by one Spiegelman against the petitioner. An attorney in Connecticut issued an attachment writ and then Sheriff Blackmon garnished Two Hundred (200) Dollars at respondent bank. The Deputy Sheriff also attached petitioner's automobile which carried a lien of this respondent and in which petitioner had no equity.

Subsequently that action was withdrawn and an identical action absent a deficiency in the summons was instituted through the same attorney and Deputy Sheriff. This petitioner instituted suit in 1966 against that Deputy Sheriff pursuant to the same

United States statutes as herein for damages claiming an alleged violation of his civil rights. Subsequently, other attorneys attached the same bank account using different sheriffs. Ultimately, the automobile was repossessed by this respondent.

The action in the United States District Court against Deputy Sheriff Blackmon and the lawyers was subject to a successful Motion for Summary Judgment by the defendant Deputy Sheriff and the defendant attorneys and the matter was appealed to the United States Court of Appeals for the Second Circuit where the judgment of the District Court was affirmed after which petitioner herein petitioned for a writ of certiorari. *Rafter v. Blackmon et al* No. 72-1277 (Supreme Court of the United States, October Term, 1972). Thereafter, in 1973 the present action was commenced making almost identical claims against respondent bank apparently claiming that the acceptance of apparently valid legal process under existing state law served upon respondent by certain sheriffs at the behest of certain attorneys was a conspiracy which denied petitioner equal protection of the laws. The complaint, respondent's Motion to Dismiss, the opinion of the District Court and judgment of dismissal and the judgment of the United States Court of Appeals for the Second Circuit are contained in the Appendix of petitioner. The judgment of the Court of Appeals is dated June 3, 1974 and the instant petition was filed with the Clerk of the Court ninety-two (92) days later, on September 3, 1974.

## POINT I

**The petitioner cannot pursue this matter because of late filing.**

The petitioner had ninety (90) days to file, twenty-seven (27) days in June, thirty-one (31) days in July, thirty-one (31) days in August and the first (1st) day of September. Therefore, the petition should be dismissed for failure to submit within the

time prescribed. *Parker v. State*, 267 U.S. 604, 69 L.Ed. 810, 45 S.C.R. 507. 28 U.S.C. § 2101 (c).

## POINT II

**The court correctly followed the rule set forth in Tucker v. Maher and other cases in holding that a good faith use of existing state attachment statutes does not entitle petitioner to pursue due process or equal protection monetary relief.**

The petitioner's main point seems to be that his case differs from *Tucker v. Maher*, 497 F.2d 1309 (1974), *Pfotzer v. Dorr-Oliver, Inc.*, Civil No. B587 (D. Conn. May 11, 1973) and *Kavanewsky v. Greater Development Co. of Conn., Inc.* Civil No. B-593 (D. Conn. July 5, 1973) in that he alleges a conspiracy. Only in the broadest sense does he make the allegations. On deposition in the prior matter on the same set of facts which this petitioner attempted to bring to this Court, he admitted that he knew of no facts that made the respondent bank a part of the conspiracy; he merely alleged then a conspiracy; that Deputy Sheriff Blackmon and the attorneys conspired against him with "others". Now he alleges that the respondent bank conspired with "others" pursuant to a conspiracy. As is set forth in the appendix to this Brief, he was specifically asked if he was claiming that the bank was a part of the conspiracy. He said no. (Resp. App. 7). He simply stated that he put it in his complaint. Indeed, he claimed that he had in mind no corporation, Connecticut, New York or anywhere as a party to the conspiracy, he just put it in his complaint (Resp. App. 8).

Thus, there is no fact nor real allegation of a conspiracy and the case does not substantially differ from the line of cases relied upon by the District Court and expanded by the Court of Appeals with the *Tucker* decision.

Indeed, the petitioner suffered no measurable damages in that respondent cleared the attachments from the account (Pet. App. A13) and the car which was repossessed was one in which petitioner had no equity. (Resp. App. 8)

## POINT III

**The Connecticut Statute of Limitations provides an effective bar to this action.**

Although the District Court did not reach the issue of the statute of limitations, the issue was a part of the Motion to Dismiss and would be a bar to this action if litigated. All the occurrences objected to by the petitioner occurred in 1964 and 1965 and the action commenced August 9, 1973. The Connecticut Tort Statute of Limitations is attached. (Resp. App. 9). Accordingly, there is no justiciable controversy in any case.

## POINT IV

**The previous court decisions in the Blackmon case effectively dispose of the issues herein (other than the issues of late filing and statute of limitations).**

Petitioner had his day in Court in the previous action on the same set of facts brought to the same courts. Indeed, he issued a Covenant Not To Sue most of the possible defendants (Brief in Opposition of Respondents Harvey Koizim and Jerry Davidoff, *Rafter v. Blackmon et al.* No. 72-1277, Supreme Court of the United States, October Term, 1972 App. P. 9.) It appears to respondent that it was selected for this litigation because it unfortunately was not included in the Covenant Not To Sue. The issues are stale, moot and have been decided.

## CONCLUSION

**For the foregoing reasons, the petition for a writ of certiorari should be denied.**

Respectfully submitted,

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# APPENDIX

A. I don't know. I have no one specifically in mind at this time.

Q. Are you claiming that the bank was a part of the conspiracy?

A. Not at this time, no.

Q. You are claiming a conspiracy, is that right?

A. That's right in the complaint, yes.

Q. Are you claiming that any corporation in Connecticut is a part of the conspiracy?

A. Mr. Gordon, can't we cut this short? I've named just two defendants and that's all I know about right now.

Q. Well, you've apparently — you apparently know about a little bit more or are making claim of a little bit more than just two defendants. You made an allegation about a little, you've made an allegation, you've already specifically told us, Mr. Rafter, about the person who came with the sheriff.

A. Uh huh.

Q. Are you claiming that the garage where the car was kept, that person's a part of the conspiracy?

A. Not that I know of.

Q. Are you claiming that any corporation in Connecticut was a party to the conspiracy?

A. No, there was no mention of corporation, in the complaint.

Q. I'm not asking what's in the complaint. I can read

that. I'm asking what you are claiming.

A. My claim is set forth in the complaint, Mr. Gordon. There's no mention of a corporation.

Q. Do you have in mind that any Connecticut corporation was a party to the conspiracy?

A. No.

Q. Do you have in mind that any New York corporation was a part of the conspiracy?

A. No.

Q. Do you have in mind that any corporation anywhere was a party to the conspiracy?

A. No.

* * *

Q. So that the only proof you gave to Judge Johnson of the value of what was attached was your statement that approximately $200 worth of bank account was attached?

A. Oh, no. I told him about the car having been purchased brand new two months ago and financed through the Fairfield County Trust Company. He knew it was a valuable car and he had the return of the Sheriff there.

Q. But you owed money on the car, didn't you?

A. Oh, yes.

Q. You owed quite a bit of money on the car?

A. Yes, indeed.

Q. Did you give any proof of the value of your equity of the car.

A. I think I told Judge Johnson I had no equity in the car.

Q. In other words, it was your position at that hearing that you had no equity in the car and that there was only $200 under attachment, is that right, in the bank account, approximately $200?

A. That and also my position that the attachment was supposed to be property of the defendant and if I had no equity in the car what were they doing taking the car.

**CONNECTICUT GENERAL STATUTES — Sec. 52-577**

Sec. 52-577. ACTION FOUNDED UPON A TORT. No action founded upon a tort shall be brought but within three years from the date of the act or ommission complained of. (1949 Rev., S. 8316)

Excerpt of a portion of the Decision in *Pfotzer v. Dorr-Oliver, Inc.* ..... Fed. Supp. ....., Civ. No. B-587 (D. Conn. May 11, 1973).

In addition to their claim for injunctive relief, plaintiffs seek damages, but this claim also warrants dismissal. Even if plaintiffs prevailed on the merits of their attack on both garnishments, damages would not be awarded. The defendants obtained the first garnishment under a statute valid at the time they acted, and any infirmity in the second garnishment stems from the alleged inadequacy of the hearing in the state court. Even if the hearing was deficient, defendants would in no event have to respond in damages for acting in good faith upon a court order they believed they had validly obtained.

Accordingly, the defendants' motion to dismiss is granted.

Excerpt of a portion of the Decision in *Kavenewsky v. Greater Development Co. of Conn., Inc.*, Civil No. B-593 (D. Conn. July 5, 1973).

Plaintiffs also seek damages for the expenses incurred in replacing the attachment with a bond. In the absence of any showing that defendants acted in bad faith in securing the attachment, they will not be required to respond in damages for proceeding under statutes that had not then been ruled invalid. *Pfotzer v. Dorr-Oliver, Inc.*, Civ. No. B-587 (D. Conn. May 11, 1973).

Accordingly, judgment will enter dismissing the complaint.